

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: HETTISH

Application No.: 10/673,522

Filing Date: 9/29/2003

For: METHOD AND SYSTEM FOR
MAPPING DEVICE CONTEXT TO
IDENTITY CONTEXT

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) Confirmation No.: 1651

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) Group Art Unit: 2161

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) Examiner: Kavita Padmanabhan

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) **APPEAL BRIEF**

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) Docket No.: 2003P08061US
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Mail Stop APPEAL - PATENTS (via EFS)
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant hereby replies to the Examiner's Answer mailed on April 28, 2010.

STATUS OF CLAIMS

Claims 1 – 7 and 10 – 20 are pending and being appealed.

Claims 8 and 9 have been cancelled.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1 – 7 and 10 – 20 are unpatentable under 35 USC 102(b) as being anticipated by Diacakis et al. U.S. Publication 2002/0116336, hereinafter “Diacakis”.

ARGUMENT

Appellant respectfully addresses the following statements set forth in the Examiner's Answer.

I. At page 9, lines 12 – 14 the Examiner's Answer states that:

"The Presence Detection Engine of Diacakis, depicted in Fig. 1 and Fig. 4, reference character 18, of Diacakis clearly constitutes the claimed device oriented context application."

and further states at page 9, lines 18 – 20 that:

"the examiner is interpreting the Presence Detection Engine 18 of Diacakis to be equivalent to the claimed device oriented application since it determines a user's presence on particular devices based on the availability of the devices (Diacakis; Fig. 1; Fig. 4; par. [0026])"

Appellant respectfully disagrees.

Appellant notes Diacakis provides an explicit definition for the terms "presence" and "availability" disclosed and used therein. Specifically, Diacakis defines "presence" and "availability" as follows:

[0026] As used herein, the term "presence" is defined as the ability of an individual to access a particular communications network. For example, if a person is near a landline telephone or wireless telephone that is switched on, that person is "present" on a telephone network, i.e., the person is able to use the telephone network to communicate with other people also on the network. Conversely, if a person is not near a landline telephone or wireless telephone, or the wireless telephone is switched off, then that person is not present on a telephone network, and thus unable to communicate with others on the telephone network. Similarly, if a person uses an instant messaging (IM) application at a given point in time, the person is present on that instant messaging network.

[0027] In addition, as used herein the term "availability" is defined as the willingness of an individual who is present on one or more communications networks to be reached by one or more persons. Following the telephone network example above, if a person is near a landline or wireless telephone and has the intention or willingness to answer the phone when a particular person calls, the person is not only present but available on the telephone network. However, if the person is

unwilling or unable to answer either phone when it rings, although present, the person is not available. (emphasis added)

Thus, it is clear that Diacakis clearly and explicitly defines the two distinct terms of presence and availability. It is also clear that both presence and availability are used to describe and relate to an individual user or person. Neither term is defined in terms of a device, or even in the context of a device. Both terms represent and are associated with a *determination* regarding either the ability of an individual to access a particular communications network (i.e., presence of the individual) or the willingness of an individual who is present on one or more communications networks to be reached by one or more persons (i.e., the availability of the individual).

It is further noted that the two Diacakis terms, presence and availability, are distinct since, as Diacakis states, the person can be present and available on the telephone network in the disclosed example and, in different circumstances the person can be not available, although present.

Accordingly, although the Diacakis terms *presence* and *availability* both explicitly relate to and describe certain specific aspects of an individual, the terms are not interchangeable or mean the same thing. That is, the presence of an individual is not the same as the availability of that individual.

Given the explicit definition of the terms presence and availability by Diacakis, it is respectfully submitted that the Examiner is mistaken for interpreting “the Presence Detection Engine 18 of Diacakis to be equivalent to the claimed device oriented application”. Such an interpretation is not supported by the cited and relied upon Diacakis reference. Diacakis specifically and explicitly states the Presence Detection Engine 18 provides “presence information to the availability management engine 20, which in turn may determine the individual’s availability based on the presence information”. (emphasis added)(Diacakis, paragraph [0038])

Therefore, it is clear the Presence Detection Engine 18 of Diacakis provides presence information (i.e., defined as the ability of an individual to access a particular communications network) to the Availability Management Engine 20 that determines the

individual's availability based on the presence information. That is, no availability information for a device is determined by the Presence Detection Engine 18 or any other Diacakis device or system. The only device or system that does provide an *availability* is the actually provides an availability is the Availability Management Engine 20 that determines the individual's availability.

CONCLUSION

For at least the reasons set forth above and in Appellant's Appeal Brief, Appellant respectfully submits that the rejection of the claims is improper.

Accordingly, Appellant respectfully requests that the rejection be reversed.

If any additional fees are due in conjunction with this matter, the Commissioner is hereby authorized to charge them to Deposit Account 50-1852.

If any issues remain, or if the Examiner or Board believes that a telephone interview would expedite the prosecution of this application in any way, kindly contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

June 28, 2010
Date

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